

04-1828-CBS

AFFIDAVIT OF SPECIAL AGENT ALBERT D. LAMOREAUX

I, Albert D. Lamoreaux, being duly sworn, hereby depose and say:

1. I am a Special Agent ("SA") of the Federal Bureau of Investigation ("FBI") assigned to the Boston Division, and have been so employed for approximately twenty-one years. My current assignment is to the Hudson, Massachusetts Resident Agency of the Boston Division. I have received specialized FBI training in both the investigation of computer and computer-related crimes and crimes involving the sexual exploitation of children. I have been designated by the FBI as a Crimes Against Children Coordinator for the Boston FBI Office. My responsibilities include the investigation of various criminal offenses, including the investigation of crimes involving the sexual exploitation of children. While employed by the FBI, I have participated in several investigations in which I have collected evidence in an electronic form. One of my current investigations involves an individual named Robert A. Fafard, who resides at 8 White Birch Drive, Worcester, Massachusetts.

2. I submit this affidavit in support of an application for a warrant to arrest one Robert Fafard on the basis of probable cause to believe that he has knowingly possessed and distributed in interstate commerce a visual depiction which involves the use of a minor engaging in sexually explicit conduct and which is of such

peripherals, hardware, software, printers, data storage devices, as wells as related instructions for operating the foregoing.

6. Telephone billing records.
7. All camera equipment, including digital and video cameras, undeveloped film, film, and film canisters.
8. Records evidencing occupancy and/or ownership of the Subject Premises including, but not limited to, utility and telephone bills, envelopes addressed to the Subject Premises, photographs of Robert Fafard with and/or without other persons.
9. Records of correspondence or other communications (including chatroom messages and e-mail) pertaining to or referring to child pornography and/or the receipt, distribution and possession of child pornography.

conduct, in violation of Title 18, United States Code, Section 2252.

3. I also submit this affidavit in support of a warrant to search the residence of Robert Fafard at 8 White Birch Drive, Worcester, Massachusetts, referred to hereinafter as the "Subject Premises." The Subject Premises are more specifically described in the section below entitled "Description of Location to be Searched."

4. The items expected to be seized from the Subject Premises constitute evidence of the commission of a criminal offense, contraband, fruits of crime and things otherwise criminally possessed as well as property designed and intended for use, and that has been used, as a means of committing the criminal offense of receipt, transportation, and possession of child pornography, in violation of Title 18, United States Code, Section 2252, and other offenses, including production of child pornography, in violation of 18 United States Code 2251(a), enticing of a minor in sexual activity for which any person can be charged with a crime, in violation of 18 United States Code 2422(b), and interstate travel for the purpose of engaging in sex with a minor, in violation of Title 18, United States Code, Section 2323 (b). The list of items to be seized is set forth in Schedule A hereto.

5. The evidence described in Schedule A includes evidence maintained in electronic format on any computer maintained within

Schedule A

1. Internet billing and use records for ma36202@aol.com, astoveman1@juno.com or any other email addresses in use by Fafard.
2. Any and all documents, correspondence or notes related to communication by mail, courier, computer, telephone or any other medium between Fafard and the person Fafard believes is Lisa and/or "ohiolisa13," including, but not limited to, chatroom messages, chatroom logs, email, travel information, printouts of information responsive to Mapquest requests, travel documents, maps, and map records.
3. Any and all documents, correspondence or notes related to communication by mail, courier, computer, telephone or any other medium between Fafard and a person Fafard believes to be a minor, including, but not limited to, chatroom messages, chatroom logs, email, travel information, printouts of information responsive to Mapquest requests, travel documents, maps and map records.
4. Any and all child pornography, meaning any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct, or such visual depiction appears to be of a minor engaging in sexually explicit conduct.
5. Any and all computers and all related computer equipment,

the Subject Premises. The methods by which the electronic information will be searched is more fully set forth in the "COMPUTER EVIDENCE" section of this affidavit.

6. The information set forth in this affidavit is based on investigation conducted by this affiant and other law enforcement agents. This affidavit does not contain every fact known to me with respect to this investigation. Rather, it contains those facts that I believe to be necessary to establish probable cause for issuance of the requested arrest warrant and warrant to search the Subject Premises.

Relevant Statutes

7. Title 18, United States Code, Section 2252, makes it illegal for any person to knowingly transport, ship, receive, distribute, or possess, in interstate or foreign commerce, any visual depiction, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct. Each subsection of Section 2252 specifically refers to computers as one means by which a visual depiction may travel in and/or otherwise affect interstate commerce.

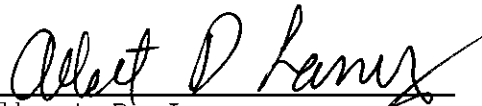
8. Title 18, United States Code, Section 2251(a), makes it illegal for any person to employ, use, persuade, induce, entice, or coerce any minor to engage in; or to have a minor assist any other person to engage in; or to transport any minor in interstate or

magnetic evidence, will be returned to the party from which they were seized, so long as they do not constitute contraband.

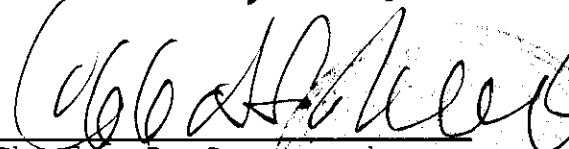
CONCLUSION

45. Based on the foregoing facts, to the best of my knowledge and belief, there is probable cause to believe that Robert Fafard has committed crimes of the receipt, transmission, and possession of child pornography, in violation of Title 18, United States Code, Section 2252, and other offenses including intending to travel interstate for the purpose of engaging in sex with a minor, in violation of Title 18, United States Code, Section 2323 (b), Title 18, United States Code, and production of child pornography, in violation of Title 18, United States Code, Section 2251(a).

46. Based on the foregoing, there is probable cause to believe that there exists evidence, fruits and instrumentalities of the above identified crimes located at 8 White Birch Drive, Worcester, Massachusetts, more fully described in Schedule A attached hereto.


Albert D. Lamoreaux
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this ^{8th} day of November, 2004.


Charles B. Swartwood
United States Magistrate Judge

foreign commerce with the intent that such minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct. This statute applies when the person knows that such visual depiction will be, or actually has been, transported in interstate or foreign commerce or mailed.

9. Definitions for theses (and other) offenses are set forth in 18 U.S.C. § 2256. Among other things, a "minor" is any person under the age of eighteen. "Sexually explicit conduct" includes actual or simulated sexual intercourse (including genital-genital, oral-genital, anal-genital, or oral-anal), bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area of any person. A "visual depiction" includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

10. Title 18, United States Code, Section 2422(b) makes it illegal for any person to knowingly persuade, induce, entice, or coerce any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense.

11. Title 18, United States Code, Section 2423(b) makes it unlawful to travel in interstate commerce for the purpose of engaging in a sexual act (as defined in Title 18, United States

destructive codes imbedded in the system as "booby traps," a controlled environment is essential to a complete and accurate analysis. In order to fully retrieve data from a computer system, the analyst needs to seize all magnetic storage devices, as well as the centralized processing units (CPUs), in order to search them in a laboratory or controlled environment.

43. To the extent practical, if persons claiming an interest in seized computers so request, I will make available to those individuals copies of requested files (so long as those files are not considered contraband) within a reasonable time after the execution of the search warrant. This should minimize any impact the seizures may have on the computer user's personal and/or business operations. If, after inspecting the computer system, including all input-output devices, system software, and instruction manuals, the computer specialist determines these items are no longer necessary to retrieve and preserve the data evidence, I will return them as soon as practical, so long as such items do not constitute contraband.

44. Only items authorized to be seized will be printed out for evidence purposes. Other records that may be found on the same storage medium will not be shown to anyone else, nor printed for any purpose. As soon as reasonable, those items of hardware and software no longer required for the purpose of analysis or copying of items authorized to be seized, or for the preservation of

Code Section 2246(2)) with a person under eighteen years of age that would be in violation of Title 18 United States Code Section 2243(a) if the sexual act occurred in the special maritime and territorial jurisdiction of the United States, or to attempt to do so.

12. For purposes of this affidavit, I will refer to any individual under the age of 18 as a "child" or "minor," and to any visual depiction of a child or minor engaging in "sexually explicit conduct," as defined in Section 2256, as "child pornography".

BACKGROUND

13. The FBI, state and local law enforcement agencies are currently conducting undercover operations targeting individuals who use online telecommunications facilities (the Internet) to transmit and receive child pornography and/or to lure children into illicit sexual relationships.

14. This investigation involves an undercover operation directed at Robert Fafard. Fafard has participated in interstate communications over the Internet and telephone with undercover law enforcement officers which establish probable cause to believe that Fafard will travel interstate for the purpose of having sexual relations with a person Fafard believes to be a twelve (12) year old female. The evidence from this investigation also establishes probable cause to believe that Fafard has transmitted images depicting child pornography in interstate commerce, using the

the individual files they contain (analogous to looking at the outside of a file cabinet for the markings it contains and opening a drawer capable of containing pertinent files); "opening" or reading the first few "pages" of such files in order to determine their precise content; "scanning" storage areas to discover and possibly recover recently deleted data; scanning storage areas for deliberately hidden files; and performing electronic "key-word" searches through all electronic storage areas to determine whether these storage areas contain information intimately related to the subject matter of the investigation.

41. Searching computer systems for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment, and that data search protocols are exacting scientific procedures designed to protect the integrity of the evidence, and to recover "hidden," erased, compressed, password protected, or encrypted files. Many commercial computer software programs also save data in unique formats that are not conducive to standard data searches. Some programs encountered create temporary "print files" to generate hard-copy printouts, then automatically delete these files; the remaining data is then compressed into a format that is not viewable with standard utility software programs.

42. Because computer evidence is extremely vulnerable to tampering or destruction, both from external sources or from

Internet. Finally, the evidence establishes probable cause to believe that Fafard is using his residence and one or more computers in his residence to commit the offense of transmitting child pornography in interstate commerce, in violation of 18 U.S.C. § 2252, and other offenses described above.

THE INSTANT INVESTIGATION

15. Scott Romus is an FBI Special Agent assigned to the Cleveland, Ohio office. He has been specially trained by the FBI to conduct online undercover investigations targeting individuals trading and distributing computer images depicting child pornography as well as individuals who lure children into illicit sexual relationships.

16. On April 14, 2004 SA Romus connected to the Internet using Yahoo Messenger (YM), a service used to chat on a real-time basis with other users. YM can also be used to transfer files between users. SA Romus was logged on using an undercover screen name, "ohiolisa13" and was posing as a twelve-year-old female. "ohiolisa13" was contacted directly by user screen name "ma36202." "ma36202" identified himself as Bob, a fifty-nine year old male from Massachusetts. "ma36202" told "ohiolisa13" he had lots of pictures of naked girls younger than twelve on his computer. He sent "ohiolisa13" several computer files, all of which were unreadable. He attempted to obtain the telephone number of "ohiolisa13". He told "ohiolisa13" his email addresses were

concerning the operation of the computer system and software programs.

38. Based on my training and experience, I know that computer storage devices, such as hard disks, diskettes, tapes, CD-Rs, and the like, can store the equivalent of thousands of pages of information. As an example, a one hundred megabyte (100MB) hard drive would have the capacity to store approximately 50,000 pages of typewritten, double spaced text; however, I have also been advised that the majority of computers currently sold have a minimum, 10 gigabyte (10000MB) hard drive, or larger, with an equivalent capacity in excess of 5,000,000 pages of typewritten, double spaced text.

39. Based on my training and experience, I know that when a user wants to conceal criminal evidence, the user often stores it in random order with deceptive file names. Locating such evidence requires investigators conducting the search to examine all the stored data to determine which particular files are relevant and within the scope of the search warrant. This search process can take days or weeks, depending on the volume of data stored, and it would be impractical to attempt this kind of data search on-site.

40. With respect to this latter part of the search, the analysis of electronically stored data may entail any or all of several different techniques. Such techniques may include, but shall not be limited to, surveying various file "directories" and

MA36202@aol.com and astoveman1@juno.com.

Identification of ma36202

17. SA Romus contacted various online and interstate communication services to identify the user of the email addresses MA36202@aol.com and astoveman1@juno.com.

18. On April 15, 2004, SA Romus served Administrative Subpoenas on America online (AOL), pertaining to screen name "ma36202." AOL responded the user name was associated with AOL user and subscriber Robert Fafard, 8 White Birch Drive, Worcester, Massachusetts. AOL records indicate Fafard's telephone numbers are (508)981-4806 and (508)798-3149. The account was active.

19. On April 15, 2004, SA Romus served an Administrative Subpoena on Juno Online Services Inc. for information pertaining to email address "astoveman1@juno.com" The company responded that this email address was associated with user Robert A. Fafard residing at 8 White Birch Drive, Worcester, Massachusetts with a telephone number (508)756-2598.

20. On April 15, 2004 SA Romus served an Administrative Subpoena on Yahoo, Inc. for information pertaining to screen name "ma36202." The company responded that the user name was associated with Robert Fafard of Worcester, Massachusetts.

21. On April 20, 2004 SA Romus served an Administrative Subpoena to AT&T Wireless Inc., for information pertaining to telephone number (508)981-4806. The company responded the number

DESCRIPTION OF LOCATION TO BE SEARCHED

36. On September 2, 2004 I conducted a physical surveillance at 8 White Birch Drive, Worcester, Massachusetts and noted the house is a one-story, single-family residence, white in color, with blue window shutters. When facing the front of the house from White Birch Drive, an attached screened porch is visible on the left. A wood porch with wood rails leading to a side entrance door is visible on the right side of the house. This side door has a small roof over it. There is an attic window above the side entrance door. There is a black metal light pole in the front yard. The pole has a number "8" decal attached to it. The decal has a white background and the number "8" is in black. The roof of the structure is gray asphalt.

COMPUTER EVIDENCE

37. Based on my training and experience, and discussions with members of the FBI COMPUTER ANALYSIS AND RESPONSE TEAM (CART), I know that to properly retrieve and analyze all electronically stored (computer) data, to document and authenticate such data, and to prevent the loss of data either from accidental or deliberate programmed destruction, will require analysis by a qualified computer specialist. To do this work accurately and completely may require the seizure of all computer equipment and peripherals, which may be interdependent, the software to operate the computer system, and the instruction manuals, which contain directions

was subscribed to by Robert A. Fafard residing at 8 White Birch Drive, Worcester, Massachusetts.

22. On June 4, 2004 SA Romus served an Administrative Subpoena for information pertaining to telephone number (508) 798-3149. The company responded the number was subscribed to by Robert A. Fafard, residing at 8 White Birch Drive, Worcester, Massachusetts.

Communications between Romus and Fafard April and May 2004

23. In addition to identifying Fafard, Romus, posing throughout as a 12 year-old girl, continued to have communications with Fafard.¹ I reviewed approximately twenty-five (25) reports, provided to me by SA Romus. These reports log chat conversations between SA Romus ("ohiolisa13") and Robert Fafard ("ma36202"). The conversations took place between April 14, 2004 and October 1, 2004. During these chats, user "ma36202" stated several times that he possesses many computer file images depicting minor children who are naked and/or engaging in sexual activity. "ma36202" also stated during these chats that he is willing to travel interstate for the purpose of photographing "ohiolisa13" with no clothes on and/or having sexual relations with her. Some of the statements by

¹16. SA Romus has provided copies of numerous reports, transcripts of recorded telephone calls, chat logs and investigative summaries detailing his contacts with Robert Fafard. I have reviewed these reports and have summarized them, for the purpose of my sworn statements in this Affidavit.

me." "ma36202" stated "actually its against the law for me to kiss you i think after all there is a big age difference baby." During this logged chat conversation, "ma36202" sent an image named "bef1.jpg" to "ohiolisa13" using the file transfer capability of Yahoo Messenger. This image is described in paragraph 32 above. Based on my training and experience, this image depicts a minor engaged in sexually explicit conduct as defined in Title 18, United States Code, Section 2256. I will make this image available to the court for review at the time I seek this warrant.

35. Also on October 19, 2004, during the same chat conversation as described in the previous paragraph, "ma36202" and "ohiolisa13" discussed the image named "bef1.jpg." "ohiolisa13" asked "wow r u going to take pics like that of me?" "ma36202" responded "god yes after i lick you there." "ma36202" attempted to arrange a meeting in Rhode Island and told "ohiolisa13" "try to find out the park name and the address so i can figure out how far away i am baby she must know where you will live by now." "ma36202" discussed helping "ohiolisa13" with her homework "as long as it has something to do with kissing and feeling." "ma36202" stated "if she works like a saturday that would be so good." "ma36202" stated when they met he would "ask if i can make love to them ("ohiolisa13's" breasts) and it is put between them and move until i get off."

"ma36202" and "ohiolisa13" relating to the above are summarized below:

a) On April 14, 2004 "ohiolisa13" told "ma36202" she is a twelve-year-old female living in Ohio. "ma36202" stated he is a fifty-nine year old male from Massachusetts. He further stated he has lots of pictures of naked children younger than twelve years old. "ma36202" told "ohiolisa13" his email address is "astoveman1.@juno.com"

b) On April 15, 2004 "ma36202" told "Ohiolisa13" he is 5'7," weighs 220 pounds, has gray hair and a short beard. "ohiolisa13" asked "ma36202" "u ever do anything with gurls my age?" "ma36202" responded "a few times it was great and they seemed to like it didn't go all the way." "ma36202" told "ohiolisa13" his telephone number is (508)981-4806.

c) On April 19, 2004 "ma36202" stated that he has pictures of his neighbors, girls aged 11 and 14 years old, swimming in his pool. When asked by "ohiolisa13" if the girls are naked, "ma36202" responded he would "tell ya later baby." He stated he has pictures on his computer but that they are too close (his neighbors) to keep around.

d) On May 24, 2004, "ma36202" stated he has pictures of naked girls younger than twelve years old. He says he has been with a girl twelve years old.

displayed in the photo. The file name is bef1.jpg. Based on my training and experience, this image depicts a minor engaged in sexually explicit conduct as defined in Title 18, United States Code, Section 2256. I will make this image available to the court for review at the time I seek this warrant. "ma36202" and "ohiolisa13" discussed the photo and "ohiolisa13" asked if he wants to photograph her naked in a manner similar to that shown in the photo. "ma36202" responded "well baby i would be a liar if i said i didn't want to see you like that."

33. On October 7, 2004, during an internet chat conducted by SA Romus with Fafard, "ma36202" asked "ohiolisa13" if there is "any more news about when will you move" and stated ... "what's even better is [N. Smithfield] close to me baby."

34. On October 19, 2004, during an internet chat conducted by SA Romus with Fafard, "ma36202" asked "ohiolisa13" if she knows where in North Smithfield, Rhode Island, she is moving. "ohiolisa13" responded she was not sure yet. "ma36202" stated, in response to a question asked by "ohiolisa13" about what they would do when they actually met, "don't think there would be much we can do i think by the time you move here it will be cold unless you have a day and we could drive back here. "ohiolisa13" responded her mom would be working the second shift and asked if he could have her back before her mother came home. "ma36202" promised he would have her home on time he planned to take "pics if you let

Introduction of a female undercover

24. On May 25, 2004, SA Romus supervised a telephone conversation between Fafard and an undercover police detective from Ohio named Gerrilyn Deutsch. Detective Deutsch called FAFARD's telephone number (508)981-4806. Detective Deutsch was posing as Lisa, the twelve-year-old female with screen name "ohiolisa13." During the recorded conversation Fafard stated "11, 12, 13, are beautiful girls." Lisa asked if the girls feel weird having you (Fafard) take a picture. Fafard responded, "Well a lot of them don't. You would be surprised how many girls your age are on the computer naked." Lisa asked, "Yeah, but they let you take it?" Fafard responded, "a couple." Fafard asked Lisa "Would you let me take pictures like that of you?" Fafard further stated that he does not take pictures with himself in the pictures because "it would be dangerous to do." Fafard elaborated "No, I'm old and I'm with 2 young girls."

Visual depiction of Sexually Explicit Conduct with a child

25. On June 3, 2004, during an internet chat, "ma36202" stated "a guy sent me a few pics of young girls doing sex" and offered to email them to "ohiolisa13." When "ohiolisa13" accepted the offer he told her "make sure you delete them ok". He also requested she telephone him at telephone number (508)798-3149.

26. On June 22, 2004, during an internet chat, "ma36202" discussed visiting "ohiolisa13" in Ohio and stated 600 miles "is a

(508)981-4806. Fafard stated "I got pictures of a twelve-year-old girl, she sent me. She says she lives in New York, but she visits her father and, I don't know, in Arizona or some place like that and she has sex with her father and her friend."

30. On September 13, 2004, during an internet chat conducted by SA Romus with Fafard, "ohiolisa13" told "ma36202" that she and her mother were moving from Ohio to Rhode Island. "ma36202" stated he "could have met you for awhile when she (her mother) was at her interview." "ma36202" stated it "would be so nice you living in ri...we could meet and I could take pics." "Ohiolisa13" asks if he is still seeing his "neighbor gurl" and what he did with her. "ma36202" responded he hadnt seen the girl in a while but that he did "a lot of fondling she loved to get felt up esp her titties." When asked by "ohiolisa13" how old the neighbor girl was, "ma36202" responded "when we started she was 10."

31. On September 23, 2004, during an internet chat conducted by SA Romus with Fafard, "ma36202" asked "ohiolisa13" where in Rhode Island she was moving to.

32. On October 1, 2004, during an internet chat conducted by SA Romus with Fafard, "ohiolisa13" told "ma36202" she was moving to North Smithfield, Rhode Island. "ma36202" responded that is good news and stated "oh yeah if you let me meet you it is." "ma36202" sent "ohiolisa13" a computer file depicting a minor female naked, kneeling on all fours with her vagina and anus prominently

long way." He asked "ohiolisa13" for her physical address so he can query the software program Mapquest and obtain mileage and directions. He stated his name and address is Bob Fafard, 8 White Birch Drive, Worcester, Massachusetts. He stated, referring to a trip to Ohio, that "I'll have to see how far and how long it is and what I have going at the time you know I would love to see you." When asked by "ohiolisa13" what they would do if they met, "ma36202" responded "well every inch of you lucious (sic) body would be kissed and a few places licked." He further states "well I would love to see you naked and kiss you all over but we would need a place and take pics." "ma36202" stated that people would be suspicious if they met at a hotel and suggested they might meet at a park. When asked by "ohiolisa13" if he would hurt her, "ma36202" responded "when I get to kissing your pussy and licking it you will love the feeling so much you wont want me to stop."

27. Also on June 22, 2004, during an internet chat using Yahoo Messenger "ma36202" sent nine picture files to SA Romus who was posing as "ohiolisa13." One of the files, named "sex+1.JPG" depicts an adult male using his penis to vaginally penetrate a minor female. Based on my training and experience, this image depicts a minor engaged in sexually explicit conduct as defined in Title 18, United States Code, Section 2256. I will make this image available to the Court for review at the time I seek this warrant.

Interstate Communications July through October 2004

28. On July 8, 2004 SA Romus supervised a telephone conversation between Fafard and Detective Deutsch posing as "ohiolisa13." Detective Deutsch called Fafard's telephone number (508)981-4806. Fafard stated "I checked, it's about 600 or so miles out there, it would take about 9 hours to drive up there ... Gonna have to find a place to stay and, then we would have to meet somewhere." Fafard stated he would like to take pictures of Lisa naked ... "If you can't get naked, it's better than nothing but that's the kind I'd like to take of you." Fafard further stated he would take pictures of the two of them "Especially if I had your hands on your titties or on your nice little ass or something, you know." Fafard stated "I'd love to get a picture of you with your hand in my pants." Fafard stated they could meet in his car, a Hyundai Sonata, as the seats reclined.²

29. On August 10, 2004, SA Romus supervised a telephone conversation between Fafard and Detective Deutsch posing as "ohiolisa13." Detective Deutsch called Fafard's telephone number

²On September 13, 2004, I reviewed records of the Massachusetts Registry of Motor Vehicle (RMV). These showed that one Robert A. Fafard is a white male born July 14, 1944. His driver's license number is 011345887. He resides at 8 White Birch Drive, Worcester, Massachusetts. His digital driver's license photo was obtained and displayed a man with a heavy build, a short gray beard and gray hair. RMV records indicate a 2003 Hyundai Accent vehicle, green in color, is currently actively registered to Fafard with a Massachusetts license tag number 6604SY.